IN THE HIGH COURT OF JUDICATURE AT BILASPUR, C.G.

WRIT PETITION NO. 4495 /2005

(Petition under article 227 of the Constitution of India)

PETITIONER/ DECREE HOLDER : **Mohanlal**, aged about 80 years, S/o late Madhavram Sahu, R/o village Basin Tahsil Gurur, Distt. Durg (C.G.)

VERSUS

RESPONDENTS/ DECREE DEBTORS :

1) Bhupat Singh, S/o Mohanlal Sahu, aged about 60 years, R/o village Basin, Tahsil Gurur, Distt. Durg, (C.G.)

2) Tamradhwaj, S/o Mohanlal, aged about 58 years, occupation – agriculture, R/o village Pauwara, Distt. Durg, (C.G.)

3) Moukamlal, S/o Mohanlal Sahu, aged about 55 years, occupation agriculture, R/o village Pataura, Tahsil Berla, Distt. Durg (C.G.)

4) Puranlal, S/o Mohanlal, aged about 48 years, occupation agriculture, village Basin, tahsil Gurur, Distt. Durg (C.G.)

5) Jiyanbai, wife of Mohanlal, aged about 76 years, R/o village Basin, Tahsil Gurur, Distt. Durg (C.G.)

6) Bindabai, widow of Bhuvan Singh, aged about 92 years (dead). R/o village Basin, Tahsil Gurur, Distt. Durg (C.G.) through their legal representatives :-

Yeemendra Kumar, adopted son Bindabai, aged about 28 years, R/o village Durg (clerk District Panchayat Durg)

7) Revati Bai, wife of Bhupat Singh, aged about 58 years, (dead on 06/05/2001) through the legal representatives :-

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(2)

a) Jankibai wife of Dayalal Sahu, aged about 42 years, R/o Civil Lines, Qtr. No. 24/18 Kasaridih Durg, C.G.

b) Umesh Kumar, S/o Bhupat Singh, aged about 39 years, R/o Village Basin, Tahsil Gurur, Distt. Durg (C.G.)

c) Toshkumar, S/o Bhupat Singh, aged about 35 years, R/o village Basin, Tahsil Gurur, Distt. Durg (C.G.)

d) Yugal Kishore, S/o Bhupat Singh, aged about 33 years, R/o Revati Sadan, Subhashnagar, Durg (C.G.)

8) State of Chhattisgarh, through the Collector Durg, (C.G.)

9) Shivcharan, S/o Dhanesh Sahu, aged about 49 years, occupation agriculture, R/o village Chiturgahan, Distt. Durg (C.G.)

10) Chamanlal, S/o Dayaluram, aged about 31 years,

11) Tikamram, S/o Dayaluram Sahu, aged about 89 years, both agriculturist , R/o village Titurgahan, Distt. Durg (C.G.)

12) Kunjbai, wife of Jeetan Sahu, aged about 38 years, Agriculturist, R/o village Basin, Tahsil Gurur, Distt. Durg (C.G.)

13) Buddhu Ram, S/o Shobhit Kewat, aged about 52 years, occupation Agriculture, R/o village Titurgahan, Tahsil Gurur, Distt. Durg (C.G.)

14) Gokul S/o Sonuram, aged about 53 years, occupation agriculture, R/o village Titurgahan, Tahsil Gurur, Distt. Durg (C.G.)
(died on 25/5/95)

15) Mahasingh, S/o Gajram Sahu, aged about 54 years,

16) Soman, S/o Gajram, aged about 49 years,

17) Hemlal, S/o Gajram, aged about 44 years,

Sl.no. 15 to 17 R/o village Titurgahan, Tahsil Gurur, Distt. Durg (C.G.)

18) Shambhoo S/o Paltan Sahu, aged about 79 years, (died on 03/05/2002)

19) Kartikram, S/o Paltan Sahu, aged about 74 years,

20) Ramadhar, S/o Paltan Sahu, aged about 73 years,

Sl. No. 18 to 20 all Agriculturist and R/o village Titurgahar, Tahsil Gurur, Distt. Durg (C.G.)

21) Shankar, S/o Kunjlal, aged about 23 years,

22) Yashwant, S/o Kunjlal, aged about 20 years,

Sl. No. 21 and 22 both agriculturist, R/o Village Pauwara, Distt. Durg (C.G.)

23) Urwabai wife of Jangalram Sahu, aged about 48 years,

24) Laxmanlal, S/o Jangalram, aged about 30 years,

25) Santosh Kumar, S/o Jangalram, aged about 28 years,

Sl. No. 23 to 25 occupation agriculturist and R/o village Pauwara, Tahsil and District Durg (C.G.)

26) Ramhinbai, wife of Tourlal Yadav, aged about 53 years, agriculturist and R/o Village Pauwara, Distt. Durg (C.G.)

(6)

27) Manihar, s/o Butu Satnami, aged about 53 years, occupation agriculture, R/o village Pauwara, Distt. Durg (C.G.) (died on 7/5/98).

28) Kalpnath, S/o Badal Yadav, aged about 53 years, occupation agriculturist, R/o village Pauwara, Distt. Durg (C.G.)

29) Bakhariya, S/o Bhavna Satnami, aged about 63 years, agriculturist R/o village Pauwara, Distt. Durg (C.G.)

30) Budhiyarinbai, widow of Mukund Satnami, aged about 63 years, agriculturist, R/o village Pauwara, Distt. Durg (C.G.)

31) Dharmendra Kumar, S/o Siyaram, aged about 18 years, occupation agriculturist, R/o Village Pauwara, Distt. Durg (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT OF MANDAMUS/ CERTIORARI, ORDER/ORDERS, DIRECTION/DIRECTIONS ETC.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... WP 4498/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	16.9.2005 Shri Vishnu Kosta, counsel for the petitioner. Heard. The petitioner has preferred this petition under Article 226/227 of the Constitution of India questioning the legality, propriety and correctness of the order dated 7.2.2005 passed by learned Additional District Judge, Balod in Execution Case No.10A/98 whereby learned Additional District Judge has rejected the application of the petitioner filed under Order 22 Rule 4 of the CPC for substitution and consequent thereto the execution application on the ground that respondent Nos.14-Gokul & respondent No.27 Manihar had died before passing of the judgment and decree dated 21.2.2000 and respondent No.18-Shambulal also died on 3.5.2002. Learned Additional District Judge observed that as two persons had already died before passing of the judgment and decree, as such application for substitution of their legal heirs cannot be allowed. Even the application for bringing legal heirs of respondent No.18-Sambhulal on record was also rejected and ultimately, the execution case was rejected being abated. The impugned order passed by learned Additional District Judge is patently illegal and perverse on the face of it, therefore, notices of this petition are not being issued to the respondents, as the issuance of	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

notices would unnecessary delay the execution proceedings which is pending since 2001. However, if the respondents feel aggrieved by this order they will be at liberty to move application before this Court for modification/recalling of this order.

Brief facts leading to filing of this petition are that the petitioner herein filed a civil suit against the respondents herein for declaration, permanent injunction and partition. The said suit was decreed in favour of the petitioner vide judgment and decree dated 21.2.2000. Thereafter the petitioner herein filed an execution case before learned Additional District Judge and when the notices of the said execution case were sent to the judgment-debtors, as per the case of the petitioner, he came to know that respondent Nos.14, 18 & 27 had died. Accordingly, he moved the application under Order 22 Rule 4 of the CPC for bringing the legal heirs of these respondents on record. Reply of that application was filed by respondent Nos.9 to 13 and 16, 17, 19 & 20 mentioning therein that respondent No.14-Gokul died on 25.5.1995 & respondent No.27-Manihar died on 7.5.1998 much before the passing of judgment and decree, therefore, the suit was abated against them and the application cannot be allowed. Allowing the objection of the above respondents, learned Additional District Judge passed the impugned order.

Shri Koshta, learned counsel for the petitioner argued that respondent Nos.14, 18 & 27 remained ex-parte after service of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

summons in the suit, therefore, as per provisions of sub-rule (4) of Rule 4 of Order 22 of the CPC, it was not mandatory for the petitioner to bring legal heirs of respondent Nos.14, 18 & 27 on record, as they were ex-parte and decree could have been passed in their absence. Therefore, the order impugned is perverse.

Having heard learned counsel for the petitioner, I have perused the petition, impugned order and provisions of sub-rule (4) of Rule 4 of Order 22 of the CPC.

It is evident from Para 11 of judgment and decree dated 21.2.2000 that except respondent Nos.1, 6 & 7 against other respondents proceedings were drawn ex-parte, as they have failed to appear before the Court. Therefore, this fact is not disputed that Respondent No.14, 18 & 27 were remained ex-parte before the court before passing of the impugned judgment and decree-dated 21.2.2000. Sub-rule (4) of Rule 4 of Order 22 of the CPC provides that:

> *"The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have*

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the same force and effect as if it has been pronounced before death took place."

Sub-rule (5) further provides that;

" Where -

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 for setting aside the abatement and also for the admission of that application under Section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said Section 5, have due regard to the fact of such ignorance, if proved."

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -S-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, in view of the above provisions of sub-rule (4) of Rule 4 of Order 22 of the CPC even if a defendant dies before the judgment and decree and he was ex-parte in the proceedings, the Court is entitled to pass the judgment and decree against the said defendant notwithstanding the death of the said defendant and shall have the same force and effect as if it has been pronounced before death took place.

Learned Additional District Judge without taking notice of the above provisions has rejected the application of the petitioner filed under Order 22 Rule 4 of the CPC and consequently rejected the execution application also, therefore this order is perverse, illegally and there is no alternative but to set aside this order. Accordingly, the petition is allowed, order impugned is hereby set aside and learned Additional District Judge, Balod is directed to proceed with the case in accordance with the provisions of sub-rules (4) [illegible] of Rule 4 of Order 22 of the CPC. The petitioner will be entitled to move before the court below for passing order under sub-rule (4) of Rule 4 of Order 22 of the CPC.

I.A. No.8058/05 stands disposed of.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Roshan/-

9.9.05